

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KAZUNORI KONO,
KOUTAROU KASHIMA and
MASAYOSHI YANO

Appeal No. 96-0638
Application 08/074,546¹

HEARD: January 13, 1999

Before THOMAS, KRASS and BARRETT, Administrative Patent Judges.

THOMAS, Administrative Patent Judge.

DECISION ON APPEAL

Appellants have appealed to the Board from the examiner's final rejection of claims 1 to 15, which constitute all the claims in the application.

¹ Application for patent filed June 11, 1993.

Representative claim 1 is reproduced below:

1. A cover apparatus of a cassette tape recorder comprising:

a first cover rotatable to be openable and closable with respect to a body of said tape recorder, said first cover having holding means to encase a tape cassette so that said tape cassette encased in said holding means is rotatable in accordance with the rotation of said first cover, a length of said first cover in longitudinal directions being smaller than that of said tape cassette so that a portion of said tape cassette protrudes from said first cover when being encased in said holding means; and

a second cover engaged with said first cover to be rotatable together with said first cover and movable along said first cover, said second cover rotating to cover the entire tape cassette in cooperation with said first cover when said first cover is closed with respect to said tape recorder body, and said second cover moving substantially in parallel with respect to said first cover to overlap with said first cover when said first cover is opened by a predetermined amount with respect thereto, so that the portion of said tape cassette protrudes from a tip portion of said second cover.

The following references are relied on by the examiner:

Takamatsu et al. (Takamatsu)	4,628,498	Dec. 9, 1986
Tobimatsu (UK Patent Application)	2 211 980	Jul. 12, 1989

Claims 12 to 15 stand rejected under the second paragraph of 35 U.S.C. § 112 as being indefinite. Claims 1 to 3, 7, 8 and 12 to 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Tobimatsu. Finally, claims 4 to 6 and 9 to 11 stand rejected under 35 U.S.C. § 103 as being obvious over the collective teachings of Tobimatsu in view of Takamatsu.

Turning first to the rejection of claims 12 to 15 under the second paragraph of 35 U.S.C. § 112, we note that claims 1 to 6, 12 and 13 relate to appellants' disclosed first embodiment in Figures 1 to 13. Separately, claims 7 to 11, 14 and 15 relate to appellants' second embodiment disclosed in Figure 14. The functional language expressed in claims 1 through 6, 12 and 13 is consistent with appellants' disclosed invention relating to the first embodiment. The examiner's concern with respect to independent claim 12 is misplaced in that the second cover is disclosed and claimed to slide relative to the first cover. As such, we reverse the rejection as it relates to claims 12 and 13.

On the other hand, we sustain the rejection of claims 14 and 15 since the recitation in independent claim 14 of a cover "sliding" means is misdescriptive and subject to erroneous interpretation since this claim relates to the second embodiment in Figure 14 and the "sliding" means does not by its own recited terms provide for the pivoting action set forth in the latter part of this claim. There is no second cover sliding operation occurring in appellants' disclosed Figure 14 embodiment but only a pivoting operation of the second cover 45 with respect to the first cover 43. Therefore, we sustain the rejection of claims 14 and 15 under the second paragraph of 35 U.S.C. § 112.

We reverse the rejection of the above-noted claims under 35 U.S.C. § 102, and, consequently, the rejection of other dependent claims under 35 U.S.C. § 103 because Takamatsu does not cure the defects to be noted with respect to Tobimatsu.

In reversing the rejection in independent claims 1 and 7 on appeal, we are in general agreement with appellants' basic assertion that the single lid structure 4 of Tobimatsu does not meet the cover structure set forth in these claims. The examiner's view that Tobimatsu's cassette holder 12 corresponds to the claimed first cover in each of these claims is understood since that element 12 holds and encases the tape cassette 11 in this reference. The second clause of claims 1 and 7 requires that the second cover of the claim cover the entire tape cassette in cooperation with the stated first cover when the first cover is closed with respect to the tape recorder body. As disclosed and claimed then, when closed, covers 4 and 3 of the disclosed invention both cooperate to completely cover over cassette T when the first cover 3 is closed with respect to the tape recorder body 2. In Tobimatsu, when the lid 4 is closed, it alone covers completely the cassette 11 in this reference thereby not requiring any cooperation with the cassette holder 12 to cover the cassette 11 in the closed position of the tape holder 12. See Figures 1B, 1C, 2B and 2C. The examiner's position does not take into account this corresponding language of independent claims 1 and 7 on appeal.

We also reverse the rejection of independent claim 1 since the lid 4 of Tobimatsu is not movable along said first cover (the cassette holder 12) of Tobimatsu in the manner set forth in the second clause of claim 1 on appeal according to the examiner's position. The actual operation of Tobimatsu's cassette holder 12 and lid 4 is the opposite. Tobimatsu's tape holder 12 may be fairly said to move along said lid 4. As such, the actual operation of

Tobimatsu's device is not consistent with the examiner's application of it to the claimed invention such that the first cover and the second cover as argued by the examiner correctly correspond to all the structure and functions of claim 1 on appeal. Claim 1 also requires that the second cover move substantially in parallel with respect to the first cover. Again, the examiner's view is incorrect in asserting that the second cover or lid 4 moves substantially in parallel with respect to the first cover or cassette holder 12, since a fair interpretation of the operation of these elements in Tobimatsu is such that the cassette holder 12 actually moves substantially in parallel with respect to the lid 4.

We reach a similar conclusion with respect to the sliding action of the covers in independent claim 12 on appeal. In certain positions, it may be fairly said that Tobimatsu's lid 4 may be interpreted as being mounted on the cassette holder 12 so as to partially overlap therewith; however, the function of the cover sliding means is not fairly interpreted as causing a sliding action of the claimed second cover or lid 4 relative to the first cover or cassette holder 12 in the manner claimed. This stated sliding action must occur "responsive to rotational motion of the first cover relative to the tape recorder casing" in the last clause of claim 12 on appeal. In accordance with the examiner's view, this sliding action must be responsive to the rotational motion of the cassette holder 12 relative to the tape recording casing 2/39. This is not the manner in which Tobimatsu's device operates. Again, Tobimatsu's tape holder 12 moves responsive to action of the lid 4 and not vice versa, which is the essence of the examiner's position.

The subject matter of independent claims 7 and 14 on appeal are also not met under 35 U.S.C. § 102 by the teachings of Tobimatsu, these claims being directed to the embodiment of Figure 14 of appellants' disclosed invention. Claim 7 requires that the second cover rotate independently of the first cover in part. This feature is not met by the manner in which the examiner applies the reference against the claim. The examiner's view is that the second cover 4, or actually the lid 4 in Tobimatsu, rotates independently of the first cover or tape in holder 12. Since the tape holder 12 in Tobimatsu may not fairly be stated to operate independently of the operation of the lid 4, since the tape holder 12 operates in dependence of the operation of the lid 4, the examiner's view that the second cover or lid 4 rotates independently of the first cover or tape holder 12 is misplaced.

Moreover, claim 7 requires that the second cover independently rotate when the first cover is opened by a predetermined amount with respect thereto. The examiner's view that the second cover or lid 4 operates in a such a manner with respect to the tape holder 12 is misplaced. The opposite is true according to the operation of Tobimatsu, since the cassette holder 12 operates dependently upon the lid 4 opening in a predetermined amount such that any rotating action of the holder 12 occurs once the lid 4 is moved. Any pivoting or rotating action of the lid 4 does not occur by the tape holder 12 being moved but only vice versa.

Turning to the subject matter of independent claim 14 on appeal, for purposes of rendering a decision with respect to an art rejection, we construe the claimed cover sliding

means as a cover pivoting means. The claim requires that the second cover be pivotally mounted on the first cover. Mere appearances in Tobimatsu would indicate that lid 4 may be construed as being pivotably mounted on the tape holder 12. However, the opposite is true since it is the cassette holder 12 that actually pivots with respect to or in association with the lid 4 as the lid 4 moves. The examiner's position is misplaced that the corresponding linkage structure in Tobimatsu causes the cover "pivoting" means as claimed to pivotably move the lid 4 at a preselected angle relative to the first cover or tape holder 12. The linkage structure in Tobimatsu in fact causes the pivoting action of the tape holder 12 to occur responsive to the movement of the lid 4 at a predetermined angle with respect to the tape recorder housing 2/39. The lid 4 does not move responsive to the rotational motion of the tape holder 12 relative to the tape recorder housing in the manner argued by the examiner but rather the linkage mechanism causes the tape holder 12 to move in a pivoting motion with respect to the rotational motion of the lid 4.

In view of the foregoing, we have reversed all of the art rejections of the claims on appeal. We have, however, sustained the rejection of claims 14 and 15 under the second paragraph of 35 U.S.C. § 112, even though we have reversed the rejection of claims 12 and 13 on this statutory basis. Therefore, the decision of the examiner is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN PART

Appeal No. 96-0638
Application 08/074,546

JAMES D. THOMAS
Administrative Patent Judge

ERROL A. KRASS
Administrative Patent Judge

LEE E. BARRETT
Administrative Patent Judge

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